

State of Delaware

Department of Labor

16th Annual Report

on the

Status of Workers' Compensation

Case Management

2013 Highlights

The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases. The department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Health Care Advisory Panel for their substantial efforts in fine-tuning the Health Care Payment System, and the members of the Delaware General Assembly for their ongoing support.

Reflecting on the work accomplished in 2013, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. In January 2013, HJR 3 created the Workers' Compensation Task Force, an initiative by Governor Markell and the General Assembly to stem the recent tide of large increases in workers' compensation rates. Lt. Governor Denn chaired the Task Force, which met weekly from February to May and culminated in the release of a report highlighting four major areas of improvement. As a result of both the Task Force and the Health Care Advisory Panel, statutory and regulatory changes went into place in June and September. The Task Force reconvened in September to evaluate the results of their recommendations and determine if additional measures are warranted. Despite these efforts, the DCRB again proposed substantial increases effective December 1, 2013. The Task Force, HCAP and the DOL continue to dispute the increases, and public hearings will be held at the Department of Insurance in February 2014.
2. From an operational standpoint, OWC has achieved one of its most impressive years to date. Improvements and reductions were realized where needed, and stability was maintained where desired. The agency successfully reduced the number of continuances by 15%, and saw a record low of 38 appeals to Superior Court. OWC also accomplished an intentional drop in the average dispositional speed for processing petitions, and experienced stability in the number of petitions filed (thanks in large part to the Utilization Review process). In 2013, OWC was able to begin the implementation of technological advances that have been in the works for some time. Specifically, the agency can now electronically bill self-insureds and carriers, and generate more detailed reports from the SCARS computer program, such as tracking UR appeals and IAB member activities. The agency has also begun the implementation of an imaging initiative to digitally catalog decades of archived paper files and records.

Year in Review 2013

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its fifth anniversary on May 23, 2013. The Governor appointed Health Care Advisory Panel (HCAP) established and maintains the HCPS in accordance with 19 Del. C. §2322. The HCAP created subcommittees to refine the 5 major components that comprise the HCPS:

1. Fee Schedule
2. Health Care Practice Guidelines
3. Utilization Review
4. Certification process for health care providers
5. Forms for employers and health care providers

The 17 member HCAP contains representatives from the medical, legal, labor, business and insurance communities. The HCAP convened without one of the public representatives since May 2013 and without the employer attorney representative from June 2013 to January 2014.

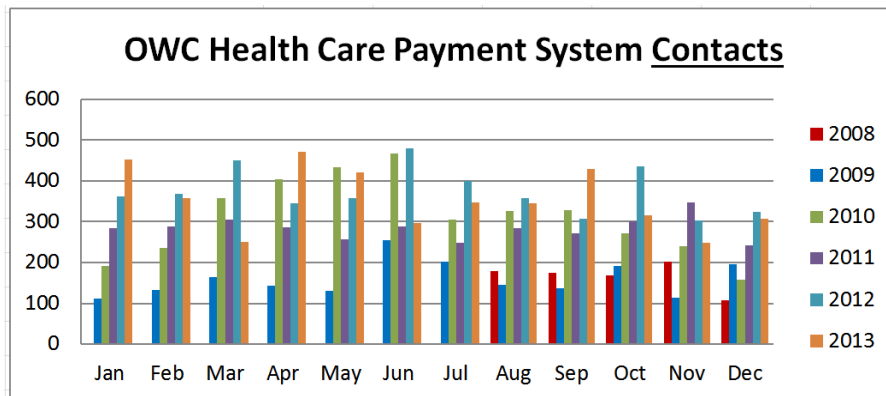
In 2013, the HCAP met eight times, which exceeded the statutorily mandated four times per year. In addition, subcommittees met seven times, while smaller work groups, comprised of medical and legal experts, held additional meetings to work on specific issues. The Office of Workers' Compensation (OWC) held two Public Meetings, in July and December, prior to the approval of updates to the HCPS Administrative Code ("the regulations"). The first group of substantial regulation changes became effective on September 11, 2013, and supported the broader medical cost containment mandates in HB 175, which the Governor signed into law on June 27, 2013.

HB 175 represented a concerted cost containment effort from the legislatively established Workers' Compensation Task Force, the HCAP, the Department of Labor, and the Department of Insurance. In addition to its broader mandates, HB175 put a two-year freeze on fee increases in the HCPS; removed the "Medical"

reference for hospital fee consumer price index (CPI) updates; codified the 45 day utilization review appeal deadline; gave carriers more responsibility to track completion of the Employer’s Modified Duty Availability Report; provided more clarification on the Data Collection Committee; and improved the workplace safety program administered through the Department of Insurance.

Some of the more pertinent medical cost containment regulations adopted on September 11, 2013, involved medical fee reductions throughout most categories of service; reductions in the number of medical fees generically paid at 85 percent of charge; reductions in medical treatment frequency, particularly for physical medicine modalities; adoption of a specific anesthesia methodology; adoption of a mandatory preferred drug formulary; and adoption of specific pharmacy methodologies and fees associated with compounding, repackaging, physician dispensing, and drug testing. Two additional regulation changes, which will become effective on February 11, 2014, name a sole source for pharmacy Average Wholesale Price (AWP) and reduce the fees for hot and cold packs.

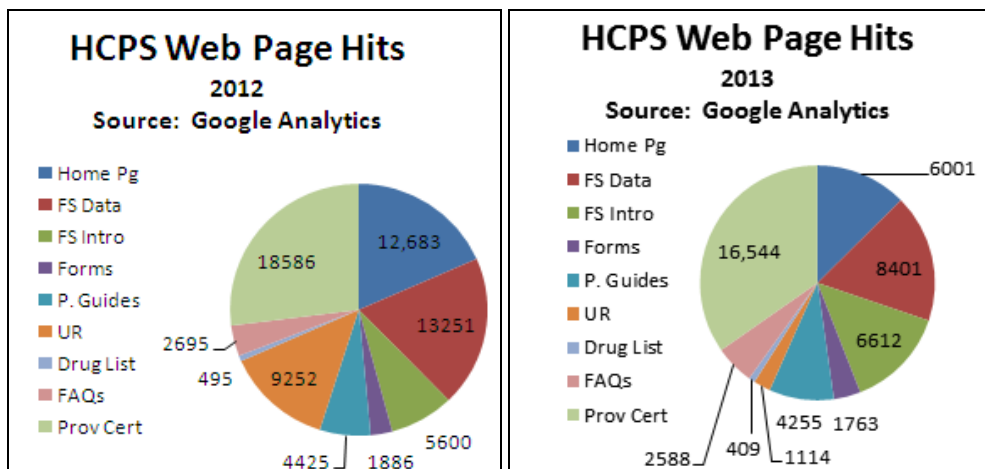
In 2013, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. After last year’s 32% increase, the 4,240 total contacts in 2013 represented a 6% decrease over the 4,488 total contacts recorded in 2012. The similarly high contact volume in 2013 comes from the “providers,” “carriers,” “other states/entities,” and “general” categories. Some of the continued high volume may be attributed to the significant statutory and regulatory changes mandated in 2013.



The Health Care Payment System portion of the Department of Labor’s website contains comprehensive information on all five components of the HCPS, as well as links to send e-mail questions, subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data, download forms, access the regulations, and complete the required continuing education course for certified health care providers.

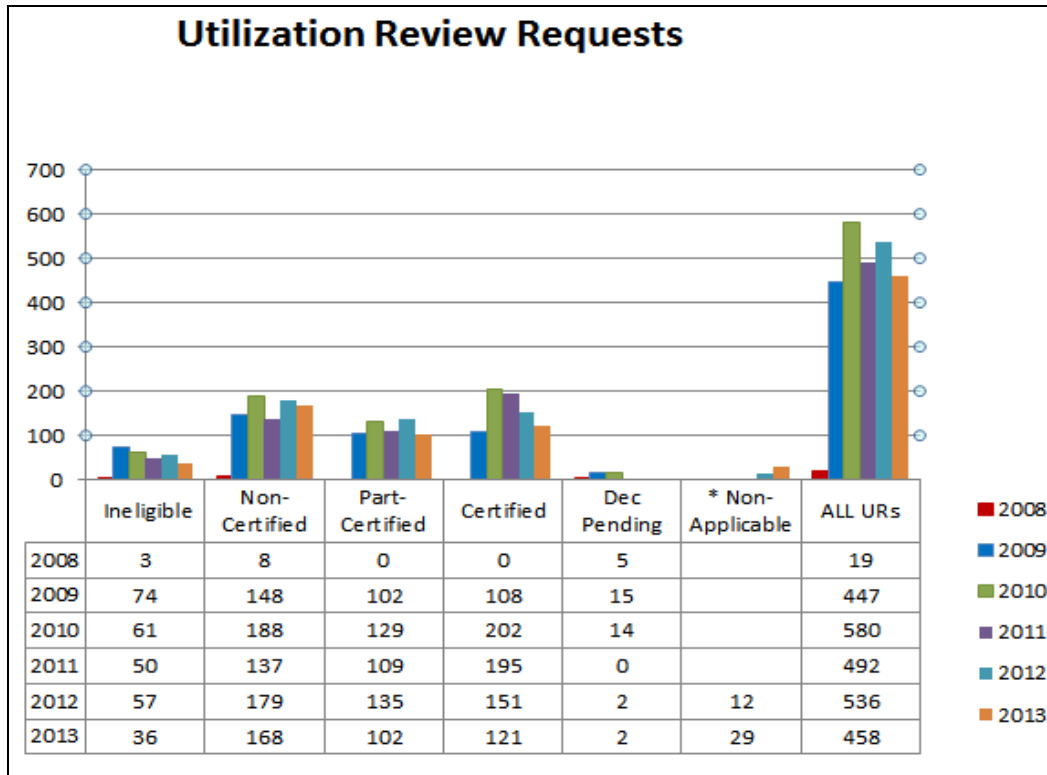
<http://dowc.ingenix.com/DWC.asp>

In 2013, the HCPS web pages received a total of 47, 687 unique visitors, which represented a 31% decrease over the 68,872 unique visitors reported in 2012. The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period. This drop stems from two months of sharp spikes in the previous year, attributed to excessive page views by the parent company of OWC’s website contractor. Once this anomaly was addressed, the counts returned to normal levels throughout the remainder of July 2012 and through all of 2013. The provider certification and fee schedule data pages represented the largest number of unique visitors.



Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may then appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course for a specific worker’s injury. OWC deems a UR request “ineligible” when the request falls outside the specified purview of UR or does not comply with the “required content, presentation and binding method” for materials submitted for review. The like-specialist reviewer deems a UR request “non-applicable” when the appropriate practice guideline does not address the treatment under review.

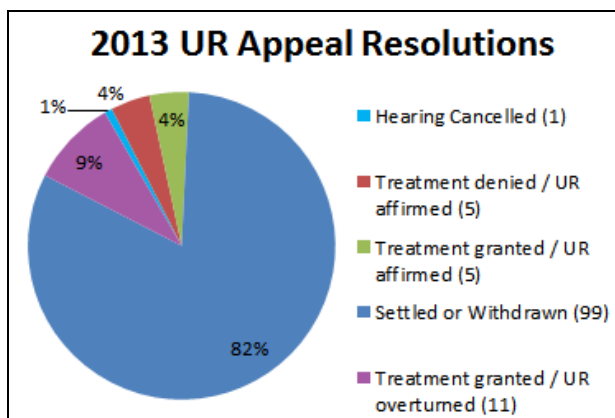
In 2013, OWC received 458 requests for utilization review, which represented a 15% decrease from the previous year. Effective June 27, 2013, the 45 day UR appeal deadline was codified in response to a decision from the Delaware Supreme Court, which did not uphold the regulations’ authority to mandate this statute of limitations.



2013 marked the first full year OWC added a dedicated “Petition to Appeal a Utilization Review.” Although SCARS (Scheduling Case Management Accounting Reporting System) will electronically track the 2014 UR appeal petitions, OWC manually captured the 2013 data. Analyzing the outcomes of these *de novo* petitions can help identify sections of the health care practice guidelines that may need to be updated, particularly if large numbers of hearing outcomes overturn the original UR determination.

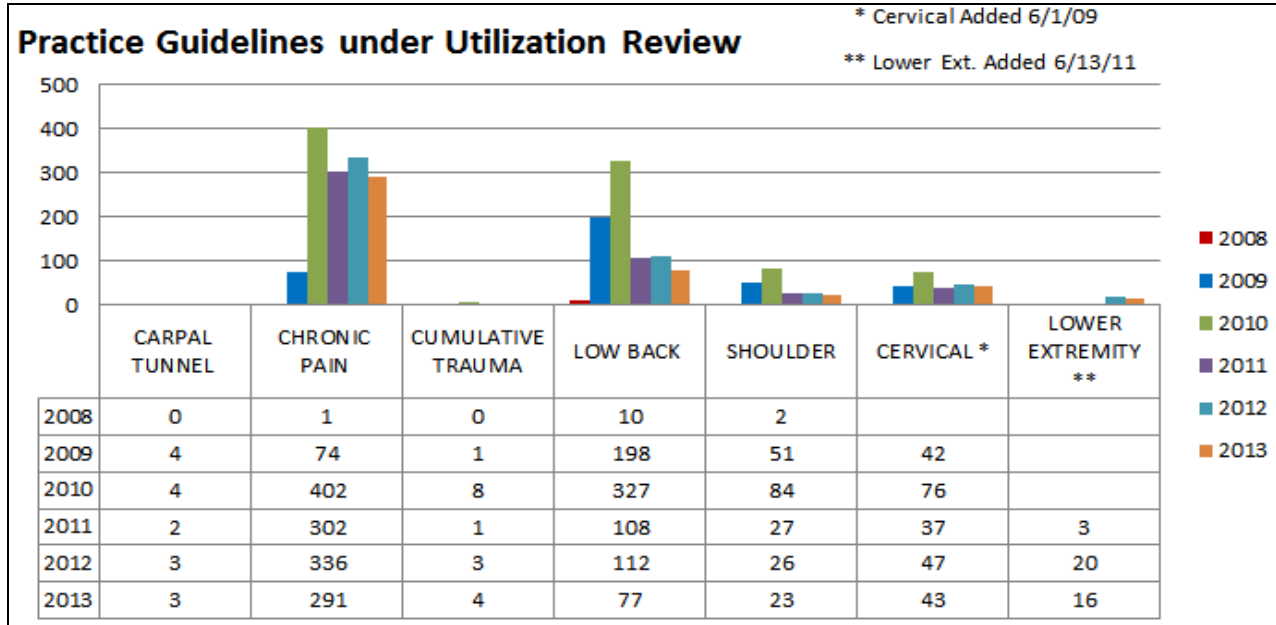
A total of 134 UR appeal petitions were received in 2013; 110 were filed by injured workers and 24 were filed by employers. This number represented 29% of the 458 total UR requests. At the end of 2013, 64 petitions were still pending.

121 UR appeals were resolved in 2013, including 51 pending petitions from 2012. 82% were withdrawn or settled by the injured worker (88 cases) or employer (11 cases) before the hearing. After the hearing, 9% (11 cases) of the UR determinations were overturned, and 8% (10 cases) were affirmed. OWC administratively cancelled 1% (1 case).

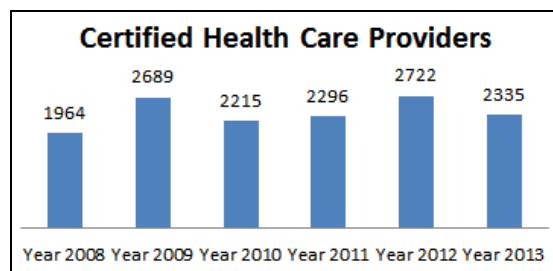


Of the 7 Practice Guidelines within the HCPS, the treatment of chronic pain, particularly prescription pain medications, is most often challenged through Utilization Review (63%). Accordingly, OWC is attuned to the issue of pain medication and its role in workers’ compensation. As a result, the agency actively participates on the Prescription Drug Action Committee (PDAC), a public-private

partnership started by the Division of Public Health and the Medical Society of Delaware, which moved forward its recommendations to reduce prescription drug abuse in Delaware.



The number of certified health care providers dropped 14% by the end of 2013. Non-compliance with the statutorily-mandated, biennial continuing education course was the most common reason providers lost their certification. In September 2013, at the recommendation of OWC, the anchor date for completion of the course changed from the provider’s initial certification date to the provider’s license renewal date, which also cycles biennially and is grouped by license type. The feedback on this change has been very positive.



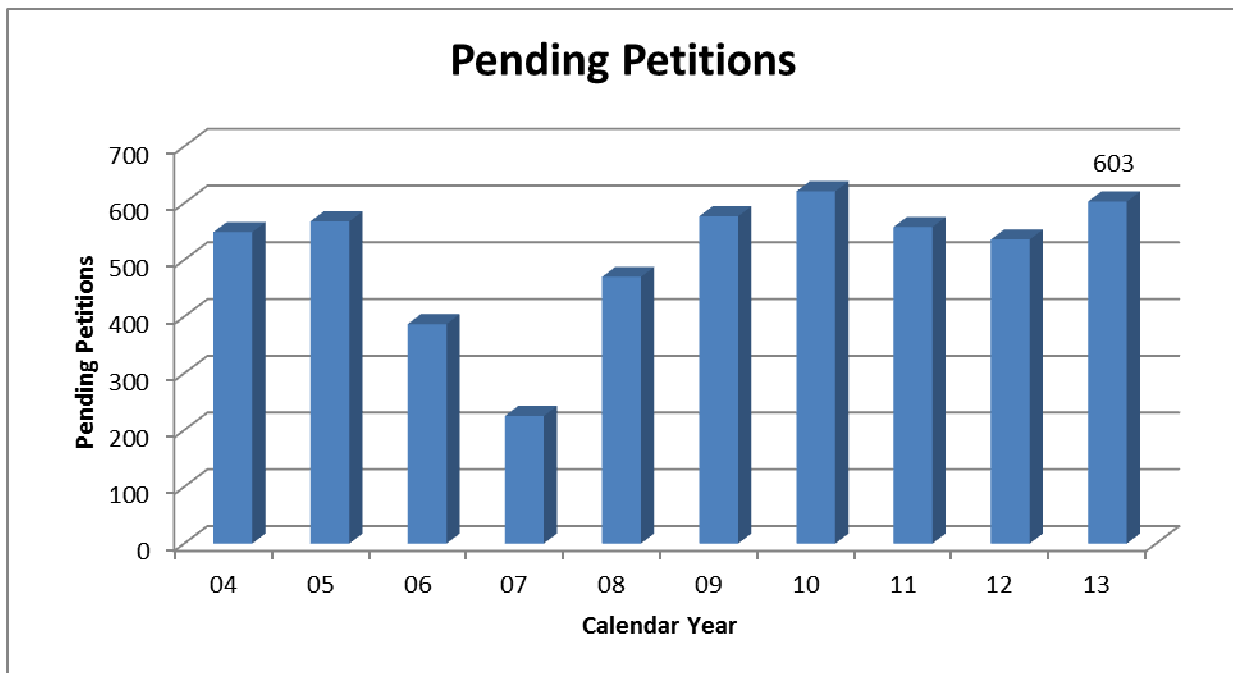
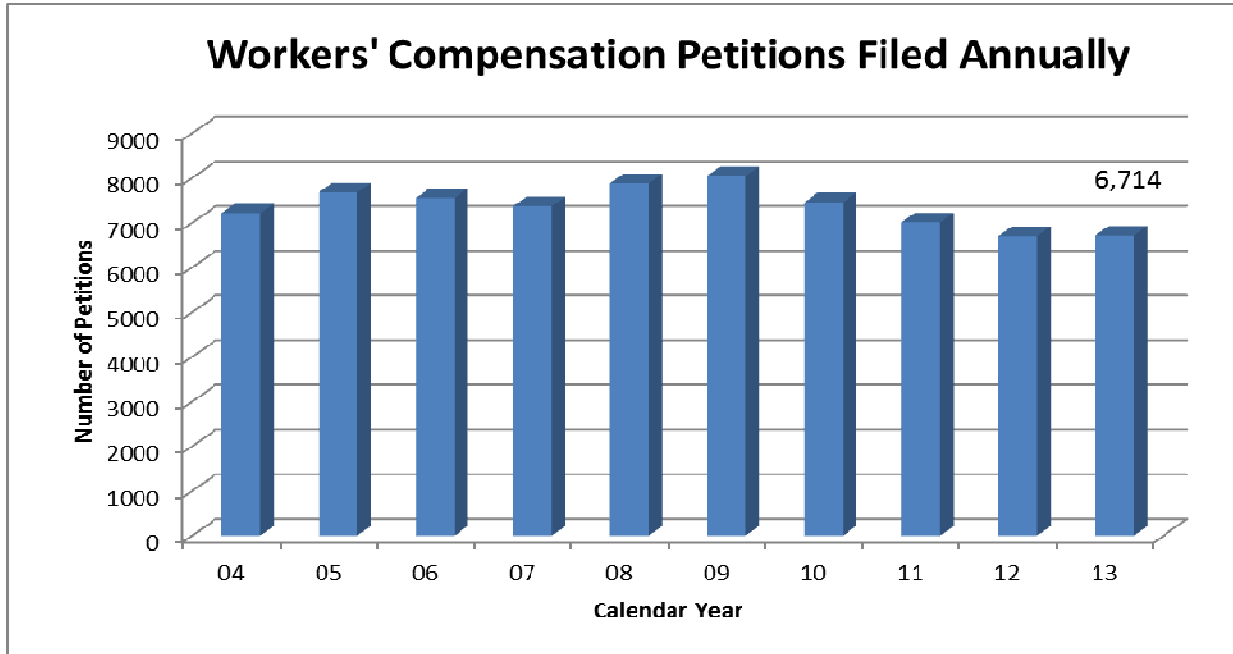
In 2013, approximately 1,500 stakeholders participated in OWC's ListServ, which represents a 25% increase over the 1,200 subscribers at the end of 2012. Launched in 2009, the OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email. OWC also maintains a Facebook page at www.facebook.com/DelawareOWC.

The Office of Workers Compensation takes pride in its website full of valuable information and links, including a list of available services, the ability to search for employer insurance coverage, access to the Workers' Compensation Act, frequently asked questions, and forms:

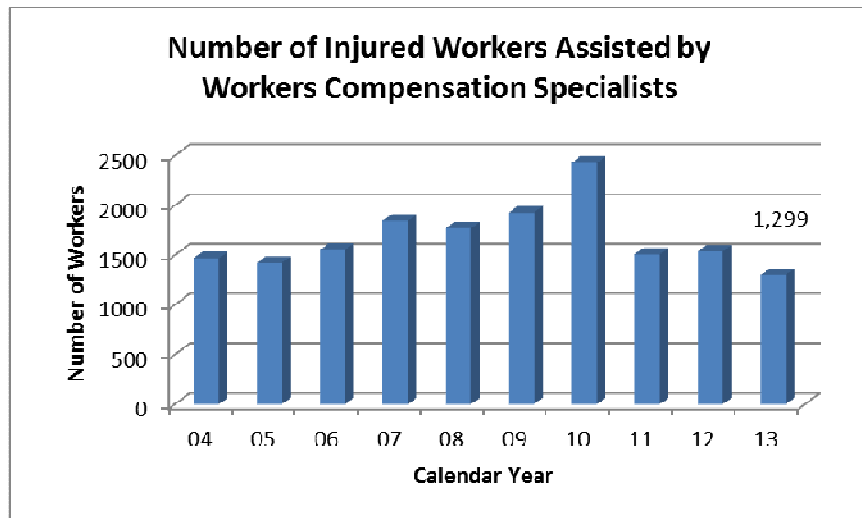
<http://dia.delawareworks.com/workers-comp/>

In 2012, the OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement, to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. The system was originally expected to be up-and-running in the first quarter of 2013. After a slight technical delay, OWC is pleased to report that the system became operational in the 3rd quarter of 2013.

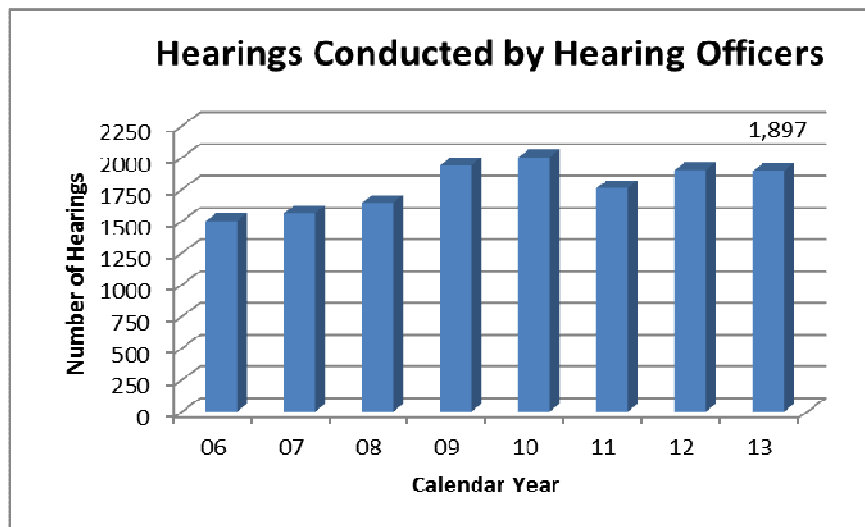
During 2013, the Office of Workers' Compensation successfully maintained its "no backlog" status. A backlog is defined as more than four months' worth of petitions. A total of 6,714 petitions were filed in 2013.



The workers' compensation specialists assisted 1,299 injured workers in processing their claims for benefits. They also provided assistance to 4,415 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 25,233 electronic requests for assistance this year, as compared to 23,468 in 2012 and 27,895 in 2011. This high level of electronic requests illustrates the public's preference for online information and electronic communication.

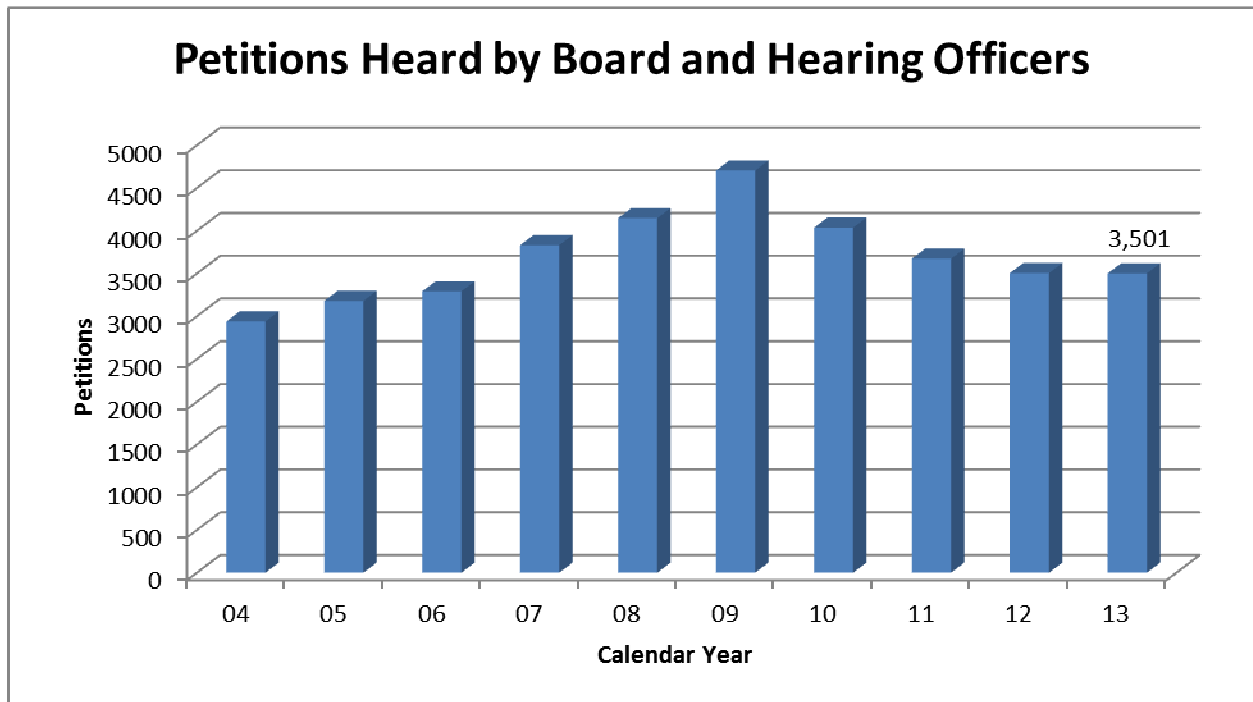


Hearing officers conducted hearings in 1,897 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



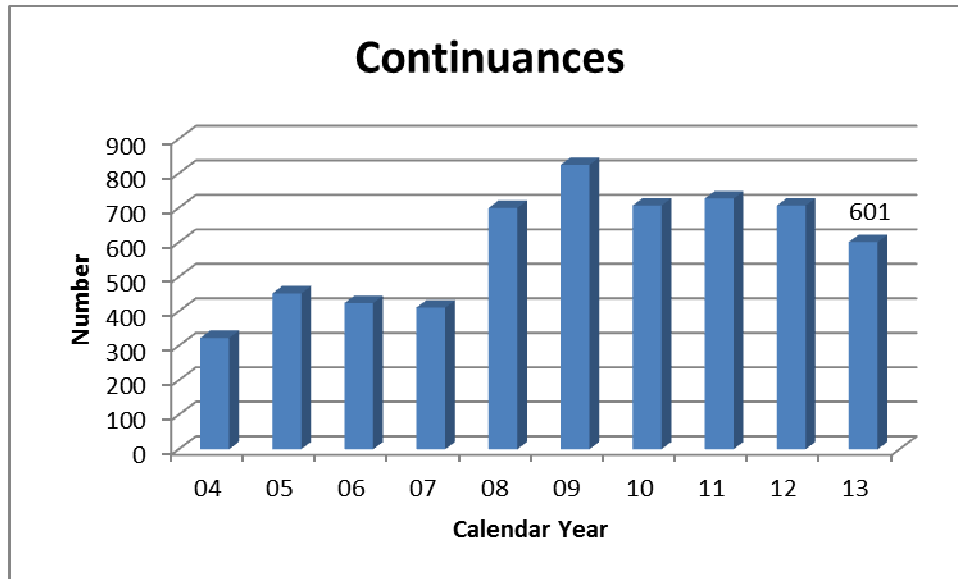
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page 8, the number of petitions filed annually remained relatively the same in calendar year 2013, as compared to 2012. For the fourth time in over 10 years, the number of petitions heard by the Board or Hearing Officers decreased. From 2012 to 2013, the total went from 3,504 to 3,501. Both the downward trend and current stability are due, in large part, to the Utilization Review process (a component of the Health Care Payment System). As anticipated, the UR process successfully led to a reduction in the number of Petitions to Determine Additional Compensation Due (DACD) specifically.



Continuances

In 2013, a total of 601 continuances were granted, which represents a 15% reduction from the 707 continuances granted in 2012. This decrease is evidence of a resolute effort on the part of the OWC to diligently scrutinize each continuance request prior to approval.



Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	502
A justifiable substitution of counsel for a party	3
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	53
• Records unavailable for review by parties prior to hearing	23
• Consolidation of issues	7
• Additional medical testing	8
• Case pending settlement	3
• Case pending appeal in Superior Court	2

Board Member Activities

The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2013. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Brady	103	56
Daniello	151	77
Dantzler	172	70
Doto*	148	71
Epolito	170	64
Groundland	151	91
Hare	152	76
Medinilla	141	69
Mitchell*	127	66
Shannon	155	71

* Extended Medical Leave

The following table shows the number of Hearings on the Merits conducted by each Board Member.

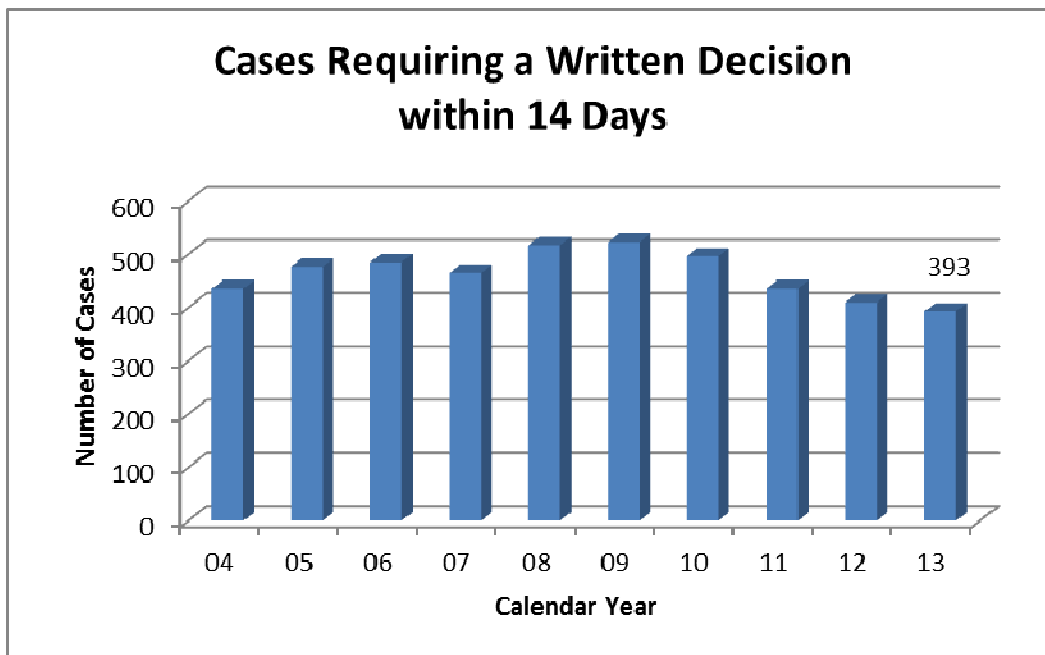
Board Member	Number of Hearings on the Merits
Brady	43
Daniello	98
Dantzler	72
Doto	73
Epolito	57
Groundland	97
Hare	77
Medinilla	83
Mitchell	76
Shannon	91

Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle	56
J. Bucklin	68
A. Fowler	78
S. Mack	45
D. Massaro	50
J. Pezzner	57
J. Schneikart	50
K. Wilson	49
C. Baum, Chief	70
Total	523

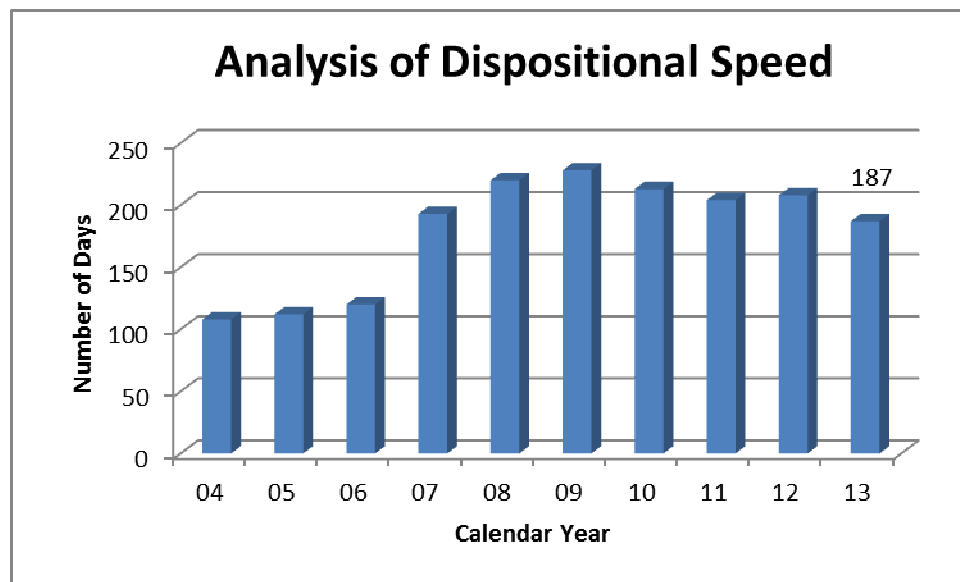
Compliance with Hearing & Decisional Deadlines

In 2013, 393 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency met the 14-day requirement in the vast majority of cases. The number of appeals continued to remain low, with only 38 appeals in 2013. In fact, this is the fewest appeals since the agency began keeping records.



Analysis of Dispositional Speed

In 2013, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 187 days. This is a significant drop from 2012, when the number of days was 208. The agency has worked ardently to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions.



Summary of Appeals

(Status of appeals taken as of December 31, 2013)

In the last five years, the Board or Hearing Officers have rendered 2,360 decisions on the merits. 296 of those decisions (approximately 12.54%) were appealed (an average of 59.2 per year). 268 of those appeals have been resolved. Only 39 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **1.65%** of all decisions rendered in those five years.

Year Appeal Taken In:	2009	2010	2011	2012	2013
Total Number of Decisions:	471	629	437	429	394
Total Number of Appeals:	63	66	67	62	38
Affirmed:	22	29	29	32	6
Reversed and/or Remanded:	11	13	8	5	2
Dismissed/Withdrawn:	30	24	29	23	5
Pending: ¹	0	0	1	2	25

Five-Year Cumulative	
Total Number of Decisions:	2,360
Total Number of Appeals:	296
Affirmed:	118
Reversed and/or Remanded	39
Dismissed/Withdrawn	111
Pending:	28

¹ For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2010, some of those appeal results may change in the future because of decisions by the Supreme Court.

Departmental Recommendations

Workers' Compensation Task Force

On January 30, 2013, House Joint Resolution No. 3 established the Workers' Compensation Task Force to review the recent increases in workers' compensation premiums. Governor Markell appointed Lt. Governor Denn to chair the Task Force, and membership includes a broadly representative group with expertise in workers' compensation matters from both public and private sectors. The Secretary of Labor serves as a member of the Task Force, and OWC provides staff support.

The Task Force was charged with proposing findings and recommendations to the Governor and General Assembly on or before May 14, 2013. Their recommendations spanned four main areas:

1. Place tighter controls on workers' compensation medical costs.
2. Ensure that insurance carriers' requests for rate increases receive a high level of scrutiny.
3. Make the state's laws encouraging injured workers to return to work more effective; and
4. Improve the state's workplace safety program to both increase its usage and ensure that it accurately determines which workplaces are using appropriate safety practices.

As a result of HB 175, the Task Force will remain in existence through June 2014. Members reconvened in September 2013 and committed to a schedule of monthly meetings. A much-anticipated presentation by the Workers' Compensation Research Institute was scheduled for January 2014, and the Task Force is anxiously awaiting the outcome of the DCRB rate filing in order to chart its next round of recommendations to the General Assembly.

Health Care Advisory Panel

The Health Care Advisory Panel will continue to meet in 2014. As delineated above, an additional round of regulatory changes will take effect in February 2014. Along with the Workers' Compensation Task Force, the HCAP awaits the final outcome of the DCRB rate filing in order to plan its next steps in medical cost containment. In the meantime, members continue to coordinate efforts with those of the Task Force and the Data Collection Committee.

Data Collection Committee

OWC actively participates with the Data Collection Committee, an advisory group appointed by the Insurance Commissioner pursuant to the Delaware Workers' Compensation statute. At least quarterly, Delaware workers' compensation medical cost data is provided by the DCRB to the Data Collection Committee (DCC), which then shares that data with the HCAP. This is another example of the interdisciplinary cooperation among the Department of Labor, the Department of Insurance, and the HCAP.